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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

71234-0076

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Signature Christine M. Judge

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Application Number

10/605,114

Filed

09/09/03

First Named Inventor

Andrew Hartmann

Art Unit

3634

Examiner

Bruce A. Lev

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/98)

attorney or agent of record.

Registration number 22,360

616-742-3500

Telephone number

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34

8-15-05

Date

Signature

John E. McGarry

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*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Andrew Hartmann

For: ROLL-UP DOOR ASSEMBLY

Serial No.: 10/605,114 Examiner: Bruce Allen Lev

Filed: 09/09/03 Group Art Unit: 3634

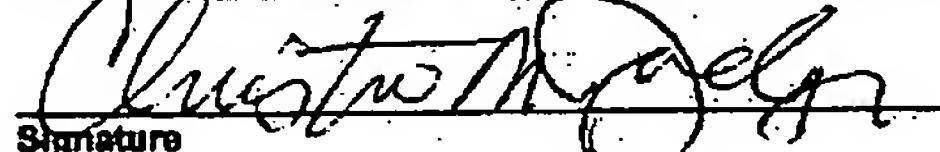
Atty. Docket: 71234-0076 Confirmation No: 2113

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Sir:

**APPLICANT'S REASONS IN SUPPORT OF REQUEST FOR PRE-APPEAL BRIEF
REVIEW OF FINAL REJECTION**

This paper is filed in support of Applicant's request for a pre-appeal brief conference in accordance with the OG Notices of 12 July 2005. Applicant believes that the rejections of record are clearly not proper and are without basis in fact or law. The request is based on a clear legal and/or factual deficiency in the rejections and not based on interpretation of claims or prior art teachings.

Claim Rejections – 35 U.S.C. § 102

1. The Examiner has not met the standard for anticipation under 35 U.S.C. § 102.

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Claims 21, 22, 24-28, 31-33, and 37 have been rejected under 35 U.S.C. § 102(b) as being anticipated by the DeFalco U.S. Patent No. 4,532,973 (DeFalco '973). The Examiner has failed to meet the standard required under *Hybritech, Inc. v. Monoclonal Antibodies, Inc.* 231 USPQ 81, 90 (Fed. Cir. 1986) because each and every element in the rejected claims is not found in the DeFalco '973 reference.

Claim 21 is an independent claim and has the following limitations which the Examiner has ignored and which are not shown in DeFalco '973 reference:

- Integrally formed elongated panels (582) having opposing interior (558') and exterior (556') walls with a relatively hollow interior and an upper (552') and a lower side (554') connecting the upper portion of the walls (558', 556') and the lower portion of the walls (558', 556'), respectively,
- a mounting plate (663) having a socket (667) made of a wear resistant material attached to each of the lateral sides of the panels through mechanical fasteners (775, 777) that extend through the interior and exterior walls (558', 556') of the panels (582) and the socket (667) receives an axle (76) of the wheel assembly (76, 78) therein.

(Annotations added.)

See Response filed August 10, 2005, pages 2-4.

Further, the Examiner has improperly refused to give significance to the term "integrally formed" in claim 21 contrary to *Vanguard Products Corporation vs. Parker Hannifin Corporation*, 234 F.3d 1370; 57 U.S.P.Q.2D (BNA) 1087 (Fed. Cir. 2000). See pages 3-4 of Response filed August 10, 2005.

Claim 38 has been rejected under 35 U.S.C. § 102(b) as being anticipated by the Machill U.S. Patent No. 4,972,894 (Machill '894). The Examiner has failed to satisfy the *Hybritech* standard of meeting all the elements of the claims. In particular, the following elements are not disclosed in the Machill '894 patent:

- an elongated socket with an inner surface with a curvature complementary to the curvature of an arcuate projection; and

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- the elongated arcuate portion fills the gap at the facing edges of the panels as the panels rotate with respect to each other about the hinge.

See arguments and graphic regarding these features on pages 5 and 6 of the Response filed August 10, 2005

Claim Rejections – 35 U.S.C. § 103

2. The Examiner has failed to make a *prima facie* case of unpatentability under 35 U.S.C. § 103(a).

Claims 9, 11, and 13-18 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over DeFalco '973 in view of Woernle U.S. Patent No. 2,184,879 (Woernle '879). The Examiner has not made the required factual findings required under *In re Vaeck* 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) to support his alleged combination of references. The Woernle '879 and DeFalco '973 references come from unrelated arts and are not faced with the same problems. There is no suggestion or motivation in either of the references that would merit their combination. The Examiner has not established a *prima facie* case of obviousness in accordance with *Vaeck, supra*. See Response filed August 10, 2005, pages 6-9.

Further, the Examiner's alleged combination of DeFalco '973 and Woernle '879 does not meet the claimed invention of claims 9, 11, and 13-18. The Examiner's alleged combination of references does not meet the limitation of an indented latch recess in an exterior wall of a bottom panel and multiple mounting supports disposed within the hollow interior extending between the latch recess and the interior wall with the latch assembly received in the latch recess. See arguments and graphic on pages 10-11 of Applicant's Response filed August 10, 2005,

Further the examiner has refused to give significance to the structural limitation "integrally formed" in claim 9. See page 2 above and on pages 3 and 4 of the Response filed August 10, 2005.

Claim 12 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over DeFalco '973 in view of Woernle '879 and further in view of the Yane et al. U.S. Patent No. 5,421,627 (Yane et al. '627). The Examiner has not made a *prima facie* case of combinability of the references principally because the references come from different arts and relate to different

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problems and none of which relate to the problems solved by Applicant's claim 12. Further, there is no suggestion or motivation for making the alleged combination. See arguments set forth on pages 12-13 of Applicant's Response filed August 10, 2005.

Claims 19 and 20 have been rejected under 35 U.S.S. § 103(a) as being unpatentable over DeFalco '973 in view of Woernle '879 and further in view of the Miller et al. U.S. Patent No. 6,431,605 (Miller et al. '605). The Examiner has failed to make a *prima facie* case under 35 U.S.S. § 103 because there is no rational basis for making the alleged combination of references as required by the *Vaeck, supra*. The Examiner has not supported the alleged combination of references with any tenable reasons. See Response filed August 10, 2005, pages 12-13.

The alleged combination of Miller '605 with DeFalco '973 and Woernle '879 does not meet the invention of claim 19. The alleged combination would not have a plurality of *integrally formed* elongated panels that include interior walls, exterior walls, upper and lower sides all connected together. See page 2 above and on pages 3 and 4 of the Response filed August 10, 2005.

Further, the Examiner's alleged combination of Miller et al. '605 with DeFalco '973 and Woernle '879 does not have a reflector recess formed in the exterior wall of a door panel. Nor would it have a recess formed in the bottom panel as required by claim 19. See graphic on page 10 and argument on page 14 of the Response filed August 10, 2005. The Examiner's alleged combination of references further does not reach claim 20. See argument on page 14 of the Response filed August 10, 2005.

Claims 29, 30, and 34-36 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over DeFalco '973 in view of the Jarvis et al. U.S. Patent No. 5,411,782 (Jarvis et al. '782). The alleged combination of DeFalco '973 and Jarvis et al. '782 is an inappropriate combination of references because the references come from unrelated arts, and there is no motivation or suggestion for the combination. See page 15 of the Response filed August 10, 2005.

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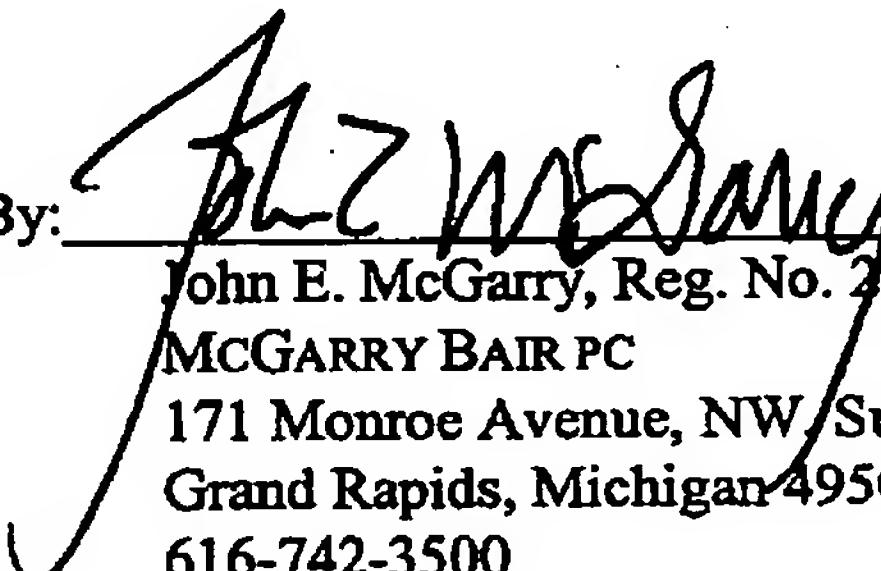
Further, the alleged combination of these references further does not reach the dependent claims 29 and 30 and 34-36. See arguments on pages 14-16 of the Response filed August 10, 2005.

The rejections made by the Examiner in his Final Rejection are not supportable in law or fact as set forth above. Reversal of the Examiner's rejections is respectfully requested.

Respectfully submitted,

Andrew Hartmann

Dated: 8-19-05

By: 

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